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10/598,657

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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/598,657 | <b>Applicant(s)</b><br>CROSBY ET AL. |  |
|                              | <b>Examiner</b><br>JESSICA LAUX      | <b>Art Unit</b><br>3635              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3 and 6-25 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 4 and 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/26/2008;09/07/2006</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13 and depending are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites "a horizontal assembly member", "first and second wing extension", "an included angle" and a "first plate member". Claim 1 also, from which claim 13 depends also recites all of these features. It is unclear whether claim 13 is redundant and the recited features are the same as those in claim 1 or if they are in addition to the features of claim 1. Appropriate clarification and correction is required. Based on the understanding from the drawings and specification it is understood that the features of claim 13 are the same as those of claim 1 and all claims depending from claim 13 will be examined accordingly, as best understood.

Claims 23,25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims recited the limitation that a first foam panel encapsulate at least one wing extension and a plate member and a second foam panel encapsulates the horizontal assembly member, but it is unclear how one panel can encapsulate the wing extension and another different panel can encapsulate the horizontal assembly when the wing extension comprises the horizontal assembly

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according to claim 1.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3, 6-10, 12, 13, 15-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Boeshart (4916879).**

Claims 1, 13 (as best understood). Boeshart discloses a corner bracket for use in combination with an insulating foam form for concrete and cement wall construction, said corner bracket comprising:

a first generally horizontal assembly member (20) including a generally intermediate section having first (2a, 50) and second (20b, 52) wing extensions projecting laterally from each side of the intermediate section, said wing extensions forming an included angle;

said assembly member including a bracing element (54, 56) for maintaining the first and second wing extensions substantially at the included angle; and

at least one separate, generally vertical plate member (58) attached or attachable to at least one wing extension of the assembly member and extending substantially vertically with respect to the assembly member to comprise a reinforcing and attachment element upon at least partial encapsulation in a foam material.

Claim 2. The bracket of claim 1 wherein the assembly member comprises first and second wing extensions substantially at 90° to each other (as seen in for example figure 2).

Claim 3. The bracket of claim 1 further including a vertical plate member (58, 62) attachable to each wing extension.

Claim 6. The bracket of claim 1 further including at least one generally horizontal bracket extension (22) within the included angle defined by the first and second wing extensions.

Claim 7. The bracket of claim 1 further including at least one bracket extension (22) within the included angle defined by the first and second wing extensions and generally bisecting the angle.

Claim 8. The bracket of claim 1 further including at least one bracket extension (22) within the included angle defined by the first and second wing extensions and generally extending from an intersection of the first and second wing extensions (at 48) and a distance sufficient to enable encapsulation of the wing extensions and a distal end (18) of the bracket extension in separate foam panels (as seen in figures 1, 3, 5).

Claims 9-10. The bracket of claim 1 wherein the included angle is less than, or greater than 90° (Col. 2, line 65- Col. 3, line 2).

Claim 12. The bracket of claim 1 in combination with at least one foam panel encapsulating at least in part the wing extensions and at least one said vertical plate member (as seen in figures 1, 3, and 5).

Claim 15. The bracket of claim 13 wherein the plate members are substantially of equal size (as seen in the figures).

Claim 16. The bracket of claim 13 wherein the plate members are substantially equally spaced from the seam (as seen in the figures).

Claim 17. The bracket of claim 13 further including a bracket element (22) extending from the seam and generally bisecting the included angle between the first and second wing extensions.

Claim 18. The bracket of claim 13 wherein the first and second wing extensions define a substantially 90° included angle (Col. 2, lines 65-67).

Claim 19. The bracket of claim 13 wherein at least one of the first and second wing extensions include a generally vertical track (the space between elements 62,64 and 58,60) for cooperation with a plate member.

Claim 20. The bracket of claim 13 wherein the included angle is less than about 90°.

Claim 21. The bracket of claim 13 including a bracket element (22) extending from the seam for a distance capable of at least partial encapsulation in a first foam panel spaced from a second foam panel at least partially encapsulating at least one wing extension (as seen in figures 1,3,5).

Claim 22. The bracket of claim 1 further including a first foam panel (12 a or b) at least partially encapsulating at least one wing extension and said plate member.

Claim 23. The bracket of claim 1 further including a first foam panel (12a) at least partially encapsulating at least one wing extension and a said plate member and a

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second foam panel (12C) at least partially encapsulating the horizontal assembly member, said first and second foam panels being separated from each other to define at least part of a mold cavity.

Claim 24. The bracket of claim 13 further including a first foam panel (12a) at least partially encapsulating at least one wing extension and said plate member.

Claim 25. The bracket of claim 13 further including a first foam panel (12a) at least partially encapsulating at least one wing extension and a said plate member and a second foam panel (12c) at least partially encapsulating the horizontal assembly member, said first and second foam panels being separated from each other to define at least part of a mold cavity.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 11, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boeshart (4916879).**

Claim 11. Boeshart discloses the bracket of claim 1 but does not expressly that the bracket is comprised of a molded plastic material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bracket of Boeshart to be made of a molded plastic material due to its efficient manufacturing and cost, since it has been held to be within the general skill of a worker

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in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claim 14. Boeshart discloses the bracket of claim 13 but does not disclose that the plate members are separate elements affixable to the said wing extensions. Rather Boeshart discloses that the plate members are integral with the wing extensions. At the time the invention was made it would have been an obvious matter of design choice modify the design of Boeshart to have the plate members separate and affixable as such modification allows for variability in wall size and support and does not appear to affect the function of the bracket as both are capable of providing corner support equally well.

### ***Allowable Subject Matter***

Claims 4-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA LAUX whose telephone number is (571)272-8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

/J. L./  
Examiner, Art Unit 3635